

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

The UNITED STATES OF AMERICA ex rel.
LOWER DRUG PRICES FOR
CONSUMERS, LLC;

Plaintiff/Relator,

versus

ALLERGAN plc,
FOREST LABORATORIES, LLC
and
FOREST LABORATORIES HOLDINGS,
LTD.

Defendants.

Civil Action No. 5:16-cv-09

JURY TRIAL DEMANDED

RELATOR'S MOTION TO DISMISS WITHOUT PREJUDICE

1. Relator Lower Drug Prices for Consumers, LLC (“Relator”) hereby moves this Court for voluntary dismissal of all claims without prejudice, to Relator or the United States of America, to refiling. Relator has not served the Complaint on any of the Defendants to the case.

2. This qui tam action was brought by Relator on or about January 13, 2016, pursuant to the False Claims Act (“FCA”), 31 U.S.C. §3729 *et seq.* Relator’s claims are premised on an *Inter Partes* Review petition filed by Relator with the Patent Trial and Appeal Board of the United States Patent and Trademark Office (“PTAB”) challenging U.S. Patent No. 6,545,040 (the “’040 Patent”).

3. On July 1, 2016, the PTAB issued a final written decision denying institution of *Inter Partes* Review of the ’040 Patent. *See Lower Drug Prices for Consumers, LLC v. Forest Laboratories Holdings Limited*, IPR2016-00379, Paper 14 (PTAB July 1, 2016). On July 29, 2016, Relator filed a motion for reconsideration of the decision denying institution. *See id.* at Paper 15. On October 19, 2016 the PTAB denied Relator’s motion for reconsideration. *See id.* at Paper 16. The PTAB’s decision denying institution is final and not appealable. *See* 35 U.S.C. §314(d).

4. In light of the foregoing, Relator seeks to voluntarily dismiss, without prejudice, to Relator or the United States of America, the present action. In accordance with 31 U.S.C. § 3730(b)(1), Relator has obtained written consent of the Attorney General for dismissal of this action without prejudice.

Respectfully submitted,

Date: December 7, 2016

NELSON BUMGARDNER PC

/s/ Donald Puckett

Donald Puckett – LEAD ATTORNEY

State Bar No. 24013358

Barry Bumgardner

State Bar No. 00793424

Anthony Vecchione

State Bar No. 24061270

NELSON BUMGARDNER PC

3131 West 7th Street, Suite 300

Fort Worth, Texas 76107

Phone: (817) 377-9111

Fax: (817) 377-3485

Puckett@nelbum.com

Barry@nelbum.com

Anthony@nelbum.com

Robert M. Parker

State Bar No. 15498000

Robert Christopher Bunt

State Bar No. 00787165

Charles Ainsworth

Texas Bar No. 00783521

PARKER, BUNT & AINSWORTH, P.C.

100 E. Ferguson, Suite 1114

Tyler, Texas 75702

Telephone: (903) 531-3535

Facsimile: (903) 533-9687

rmparker@pbatyler.com

rcbunt@pbatyler.com

charley@pbatyler.com

*Counsel for Plaintiff / Relator Lower Drug Prices
for Consumers, LLC*